

REQUEST FOR PROPOSAL



Department of Executive Services
Finance and Business Operations Division
Procurement and Contract Services Section
206-684-1681 TTY Relay: 711

DATE ADVERTISED: **January 26, 2006**

RFP Title: **Website Maintenance & Development**

Requesting Dept./ Div.: **King County Department of Natural Resources & Parks – Solid Waste Division**

RFP Number: **102-06RLD**

Due Date: **February 16, 2006 – no later than 2:00 P.M.**

Buyer: **Roy L. Dodman** roy.dodman@metrokc.gov, (206) 263-4266

Pre-Proposal Conference:

A conference to discuss questions related to this RFP shall be held at **10:00 a.m. on Wednesday, February 8, 2006**, in Conference Room 8A on the 8th Floor of the Exchange Building, 821 Second Avenue, Seattle, WA 98104.

Sealed Proposals are hereby solicited and will **ONLY** be received by

**King County Procurement Services Section
Exchange Building, 8th Floor
821 Second Avenue
Seattle, WA 98104-1598**

Office Hours - 8:00 a.m. - 5:00 p.m.
Monday - Friday

SUBMITTERS MUST COMPLETE AND SIGN THE FORM BELOW (TYPE OR PRINT)

Company Name		
Address		City/State/Zip Code
Signature	Printed Name of Authorized Representative / Title	
E-mail	Phone	Fax
Prime Proposer SEDB Certification number (if applicable - see Section II, Part 3 of this RFP)		
Sub-Consultants SEDB Certification numbers (if applicable)		

This Request for Proposal will be provided in alternative formats such as Braille, large print, audio cassette or computer disk for individuals with disabilities upon request.

If you received or downloaded this document in .pdf format, a MS Word copy may be obtained by contacting the buyer listed above. This MS Word document will be transmitted by e-mail.

Sealed proposals are hereby solicited and will be received only at the office of the King County Procurement Services Section at 821 Second Avenue, 8th Floor, Seattle, Washington, 98104 no later than 2 p.m. on the date noted above regarding *Website Maintenance & Development* for the *King County Department of Natural Resources & Parks – Solid Waste Division*. These services shall be provided to King County in accordance with the following and the attached instructions, requirements, and specifications.

Submittal: King County requires the Proposer to sign and return *this entire Request for Proposal (RFP) document*. The Proposer shall provide *one unbound original* and *four (4) copies* of the proposal response, data or attachments offered, for *five (5) items* total. The original in both cases shall be noted or stamped "Original".

Pre-Proposal Conference: A conference to discuss questions related to this RFP shall be held at 10:00 a.m. on Wednesday, February 8, 2006, in Conference Room 8A on the 8th Floor of the Exchange Building, 821 Second Avenue, Seattle, WA 98104. See link for driving instructions.

<http://www.metrokc.gov/procurement/contact/findus.aspx>.

Questions: After the Pre-Proposal Conference, Proposers will be required to submit any further questions in writing prior to the close of business Wednesday, February 8, 2006 in order for staff to prepare any response required to be answered by Addendum. Questions are best received and most quickly responded to when sent via e-mail directly to the following King County procurement personnel: *Primary* – Roy L. Dodman, Senior Buyer roy.dodman@metrokc.gov / *Secondary* – Cathy M. Betts, Buyer cathy.betts@metrokc.gov. Questions may also be sent via fax or mail to the address above.

SECTION I – GENERAL INFORMATION

- A. King County is an Equal Opportunity Employer and does not discriminate against individuals or firms because of their race, color, creed, marital status, religion, age, sex, national origin, sexual orientation, or the presence of any mental, physical or sensory handicap in an otherwise qualified handicapped person.
- B. All submitted proposals and evaluation materials become public information and may be reviewed by appointment by anyone requesting to do so *at the conclusion* of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between King County and the selected Consultant. Please note that if an interested party requests copies of submitted documents or evaluation materials, a standard King County copying charge per page must be received prior to processing the copies. King County *will not* make available photocopies of pre-printed brochures, catalogs, tear sheets or audio-visual materials that are submitted as support documents with a proposal. Those materials will be available for review at King County Procurement.
- C. No other distribution of proposals will be made by the Proposers prior to any public disclosure regarding the RFP, the proposal or any subsequent awards without written approval by King County. For this RFP all proposals received by King County shall remain valid for ninety (90) days from the date of submittal. All proposals received in response to this RFP will be retained.
- D. Proposals shall be prepared simply and economically, providing a straightforward and concise but complete and detailed description of the Proposer's abilities to meet the requirements of this RFP. Fancy bindings, colored displays and promotional materials are not desired. Emphasis shall be on completeness of content.
- E. King County reserves the right to reject any or all proposals that are deemed not responsive to its needs.
- F. In the event it becomes necessary to revise any part of this RFP, addenda shall be created and posted at the King County Procurement web site. Addenda will also be conveyed to those potential submitters providing an accurate e-mail address. If desired, a hard copy of any addenda may be provided upon request.
- G. King County is not liable for any cost incurred by the Proposer prior to issuing the contract.
- H. A contract may be negotiated with the Proposer whose proposal would be most advantageous to King County in the opinion of the King County Department of Natural Resources & Parks, all factors considered. King County reserves the right to reject any or all proposals submitted.

- I. It is proposed that if a selection is made as a result of this RFP, a contract with a fixed price (or prices) will be negotiated. Negotiations may be undertaken with the Proposer who is considered to be the most suitable for the work. This RFP is primarily designed to identify the most qualified firm. Price and schedule will be negotiated with the "first choice" Proposer; negotiations may be instituted with the second choice and subsequent Proposer until the project is canceled or an acceptable contract is executed.
- J. This RFP shall be available for use by all King County Departments, Divisions and Agencies. If orders will be placed by the County's Transit Division, the Consultant will be required to sign and comply with the Federal Transit Administration's (FTA)'s required documentation. This RFP may also be used, as appropriate and allowed, by other governmental agencies and political sub-divisions within the State of Washington.
- K. The contents of the proposal of the selected Proposer shall become contractual obligations if a contract ensues. Failure of the Proposer to accept these obligations may result in cancellation of their selection.
- L. A contract between the Consultant and King County shall include all documents mutually entered into specifically including the contract instrument, the original RFP *as issued* by King County, and the response to the RFP. The contract must include, and be consistent with, the specifications and provisions stated in the RFP.
- M. News releases pertaining to this RFP, the services, or the project to which it relates, shall not be made without prior approval by, and then only in coordination with, the King County Department of Executive Services.
- N. King County Code 4.16.025 prohibits the acceptance of any proposal after the time and date specified on the Request for Proposal. There shall be no exceptions to this requirement.
- O. King County agencies' staffs are prohibited from speaking with potential Proposers about the project during the solicitation.

Please direct all questions to:

Roy L. Dodman / Senior Buyer
(206) 263-4266
roy.dodman@metrokc.gov

or Cathy M. Betts / Buyer
(206) 263-4267
cathy.betts@metrokc.gov

NOTE: Documents and other information is available in alternate formats for individuals with disabilities upon advance request by calling Mary Lou Allwine at 206-296-4210 or TTY711.

- P. Protest Procedure - King County has a process in place for receiving protests based upon either proposals or contract awards. If you would like to receive or review a copy, please contact the Buyer named on the front page of this document or call Procurement Services at 206-684-1681.
- Q. Term Service Requirement

If a contract is awarded based on this RFP, it may contain the following provision:

Contract Extension

The initial contract period will be for one (1) year from the start date of the contract. The term of the contract may be extended in one (1) year increments for four (4) additional one-year periods for a total contract duration of five (5) years, in accordance with the County's best interest and at the sole option of the County. Prices shall remain firm for the duration of the contract period. Reasonable price changes based on market conditions and price/cost analysis *may* be requested, if such escalations are based on changes in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers ("CPI-U") for the Seattle-Tacoma-Bremerton Statistical Metropolitan Area for the preceding calendar year. You may obtain information about the CPI-U in general and the Seattle area in particular by visiting the United States Bureau of Labor Statistics web site at <http://www.bls.gov/cpi/>. In the event the CPI-U (or a successor or substitute index) is no longer published, a reliable government or other non-partisan index of inflation selected by the County shall be used to calculate any adjusted amounts. Requests for any such changes are to be made in writing to the Department of Natural Resources & Parks,

and approved by the County Executive or his/her designee. Any agreed-to change shall take effect at the time of the contract extension and shall remain in effect throughout the extension period. The parties hereto recognize that such changes could be increases or decreases in the prices; both parties are entitled to benefit from such price changes.

- R. Electronic Commerce and Correspondence. King County is committed to reducing costs and facilitating quicker communication to the community by using electronic means to convey information. As such, most Invitations to Bid and Requests for Proposal, as well as related exhibits, appendices, and issued addenda can be found on the King County Internet Web Site, located at <http://www.metrokc.gov/procurement>. Please refer to the "RFPs, RFQs & ITBs / New / Consultants" portion of the site (note: some documents or portions thereof may not be posted on the site. Please note any special messages regarding a particular solicitation). This information is posted at the Web Site as a *convenience* to the public, and is not intended to replace the King County process of formally requesting bid documents and providing the County with contact information for the potential proposer. Each proposer bears the responsibility to confirm the completeness and accuracy of all documents pertaining to a given solicitation, including the receipt of all issued addenda.

If a proposer downloads a document from the Web Site and does not contact the Procurement Office to obtain a hard copy, the proposer *must* use the "Feedback" (Envelope) button at the bottom of the Web page to convey the proposer's company name, contact name, mailing address, and phone/fax number to the County. Please note which document/documents were downloaded.

After proposals have been opened in public, the County will post a listing of the consultants submitting proposals at the King County Internet site. Please refer to the "RFPs, RFQs & ITBs / Awarded / Consultants" portion of the site for a listing, as well as a notification of a final award.

Unless otherwise requested, letters and other transmittals pertaining to this RFP will be issued to the e-mail address noted in our files, and after submittal, noted on the first page of this document. If other personnel should be contacted via e-mail in the evaluation of this proposal, or to be notified of evaluation results, please complete the information in the table below.

Contact Name	Title	Phone	E-mail address

- S. Washington State Public Disclosure Act (RCW 42.17) requires public agencies in Washington to promptly make public records available for inspection and copying unless they fall within the specified exemptions contained in the Act, or are otherwise privileged.
- T. Proposals submitted under this RFP shall be considered public documents and with limited exceptions proposals that are recommended for contract award will be available for inspection and copying by the public. King County may request an electronic copy of your proposal at a later time for this purpose. This copy may be requested in MS Word format, and delivered either by e-mail or directly delivered on CD.

If a Proposer considers any portion of his/her proposal to be protected under the law, the Proposer shall clearly identify on the page(s) affected such words as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." The Proposer shall also use the descriptions above in the following table to identify the effected page number(s) and location(s) of any material to be considered as confidential (attach additional sheets as necessary). If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the law. If the material is not exempt from public disclosure law, the County will notify the Proposer of the request and allow the Proposer ten (10) days to take whatever action it deems necessary to protect its interests. If the Proposer fails or neglects to take such action within said period, the County will release the portion of the Proposal deemed subject to disclosure. By

submitting a Proposal, the Proposer assents to the procedure outlined in this paragraph and shall have no claim against the County on account of actions taken under such procedure.

Type of exemption	Beginning Page / Location	Ending Page / Location

- U. Proposers are urged to use recycled/recyclable products and both sides of paper for printed and photocopied materials, whenever practicable, in preparing responses to this RFP.
- V. During the solicitation process, King County strongly discourages the transmittal of Company information, brochures, and other promotional materials, other than address, contact and e-mail information, prior to the due date of proposals. Any pre-packaged material received by a potential proposer prior to the receipt of proposals shall not be reviewed by the County.
- W. Bid Identification Label: Please see the Bid Identification Label on the last page of this document.

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SECTION II – PROJECT SPECIFICATIONS AND SCOPE OF WORK.

PART 1 – Project Details and Procurement Procedures

A. Project Summary

The King County Department of Natural Resources and Parks, Solid Waste Division (SWD) is seeking a design firm, consulting firm, or team of firms specializing in the field of Web site development to perform the following two tasks:

1. Update, enhance and/or troubleshoot legacy Web applications within the existing SWD Web site architecture. These applications may include both an extranet (public) Web site interface as well as a back-end Web interface used for the care and feeding of various sections of the public Web site.
2. Design/develop new Web applications on an as-needed basis. These applications may include both an extranet (public) Web site interface as well as a back-end Web interface built around the existing password-protected SWD Administration site.

B. Background

After undergoing a complete re-design, the current SWD Web site was launched on September 28, 2004. The SWD Web site is a mix of static and dynamic (database-driven) content. The following points outline the technical architecture and general operation of the SWD Web site:

1. SWD home page: <http://www.metrokc.gov/dnrp/swd/>
2. Technical Architecture:
 - a. Coding used throughout site: XHTML 1.0 Transitional; .ASP (classic, not .NET); VBScript; JavaScript; CSS 2.0.
 - b. Dynamic portions of the site utilize a SQL server 2000 backend and .ASP programming in conjunction with a password-protected administration site.
3. Content ownership: SWD Partners - SWD staff and private-sector partners - are granted varying degrees of access to the SQL database through the password-protected administration site for content uploading purposes. All content entered by SWD Partners is held in a staging environment until it can be reviewed/edited and posted by an SWD site administrator.
4. Administration site is used for the care and feeding of various sections of SWD's public Web site including:
 - a. The "What do I do with...?" site: <http://www.metrokc.gov/dnrp/swd/wdidw/index.asp>.
 - b. Various calendar pages throughout site, including the SWD-wide calendar: <http://www.metrokc.gov/dnrp/swd/calendar/calendar.asp>.
 - c. The Online Materials Exchange: <http://www.metrokc.gov/dnrp/swd/exchange/index.asp>.
 - d. Transfer station information, hours and recycling options: <http://www.metrokc.gov/dnrp/swd/facilities/transfer.asp>.
 - e. Various program contact pages, including the SWD-wide Contact Us page: <http://www.metrokc.gov/dnrp/swd/contacts/comment-form.asp>.
 - f. The EcoDeals.org site: <http://www.metrokc.gov/dnrp/swd/ecodeals/index.asp>.
 - g. The Waste Free Holidays site: <http://www.metrokc.gov/dnrp/swd/wastefreeholidays/index.asp>.
5. The balance of the SWD public Web site consists of static HTML content, is not database-driven, and does not require any work on the part of the selected Consultant.

C. Scope of Work

The Consultant shall perform Web application development tasks at the direction of the King County Solid Waste Division. The scope of work will be developed on a task-by-task basis and may be modified to meet specific requirements as they are developed.

The SWD is seeking a consultant to provide the following services:

1. Update, enhance and/or troubleshoot legacy Web applications within the existing SWD Web site architecture. These applications may include both an extranet (public) Web site interface as well as a back-end Web interface used for the care and feeding of various sections of the public Web site.
2. Design/develop new Web applications on an as-needed basis. These applications may include both an extranet (public) Web site interface as well as a back-end Web interface built around the existing password-protected SWD Administration site. See examples of existing applications under Background (section B), above.
3. Follow required guidelines and technology:
 - a. The Consultant will adhere to the King County Web Publishing Guidelines, located at <http://www.metrokc.gov/webpub/req.htm> and;
 - b. All files shall validate as XHTML 1.0. Transitional and;
 - c. Web files shall adhere to CSS 2.0 in CSS coding.
4. Terms – including scope of each task and estimated hours for completion – will be negotiated in advance and in writing (e-mail or work order) on a task-by-task basis.
5. Other Web development tasks as needed.

D. Time of Performance

Work to be completed in 2006 – the contract may be extended in one-year increments for up to five years maximum upon the discretion of the SWD.

E. Budget

1. \$27,920 available budget through Dec. 31, 2006 billed on a time plus materials, task-by-task, hourly basis.
2. Future amendments may total up to an estimated \$161,600.
3. Possible total budget (including future amendments): \$189,520.

F. Mandatory Requirements

1. The Consultant shall adhere to all King County Web Publishing Guidelines located at: <http://www.metrokc.gov/webpub/req.htm>.

G. Minimum Qualifications

1. Consultant shall specialize in the field of Web application and/or database design and development and; show demonstrated experience working with the following technologies:
 - a. .ASP (i.e.- not .NET) application programming
 - b. VBScript
 - c. SQL Server Database design and implementation
 - d. JavaScript
 - e. CSS 2.0
 - f. XHTML 1.0 Transitional

H. Desired Qualifications

1. Experience working with large government agencies
2. Past experience working with King County agencies
3. Knowledge of or experience working directly with King County Information and Telecommunications Services Division.

I. Proposal Format

1. Proposers shall submit one (1) original and (4) copies of the proposal. The proposals shall be limited to 10 pages of text (five double-sided pieces of paper) printed in ten-point font or larger. Each proposal shall contain the following in this order:

2. Cover Letter (not counted in the ten page limit)

The cover letter shall include the name and phone number of the primary person to contact with information about the procurement process.

3. Qualifications and Related Experience

The proposer shall provide the following:

- a. A description of the project team that would work on the contract documenting their qualifications and work experience, the number of years they have worked together and a description of past projects.
- b. Samples of at least three projects that the team or individual team members have completed that are similar in scope to the work outlined in this RFP. The most relevant work samples include projects that were conducted for large public agencies. For each sample, list the team member(s) that did the work and a description of the type of work they performed.

4. References (not included in the ten page limit)

Include a list of references for the work done on the sample projects outlined in Section 3 (b) above.

5. Approach to Scope of Work

- a. Outline your standard or proposed approach to designing/developing and deploying new Web-based applications within an existing technical environment. Describe your process for working with the client to finalize and document all necessary application requirements.

6. Value and cost of service.

- a. This contract work will be paid on a time plus materials basis. List the current hourly rates of the team members. These team members may or may not include: application developer(s)/programmer(s); database developer(s); project management specialist(s); others.

J. Consultant Selection Process

1. General Approach

A selection panel comprised of King County staff identified by the Solid Waste Division will evaluate and score the written proposals and may choose to conduct interviews. Proposals will be scored according to the evaluation criteria described below. Several firms may be invited to participate in interviews and their key team members will make presentations to the selection panel. Using the evaluation criteria below, the panel will score the written proposals and interviews (if conducted). The highest-ranking firm will be notified and contract negotiations will begin.

2. Evaluation Criteria

Each written proposal will be evaluated and given a score based upon the quality of response to each of the following topic areas.

a. Written Evaluation Criteria

Qualifications and Related Experience The proposer demonstrates that the project team has sufficient experience performing the tasks outlined in this proposal. Presents relevant examples of similar work performed by the team members.	40 points
References The proposer provides references for services similar to those requested in this proposal that can verify the performance of the staff identified with respect to work quality, timeliness, willingness to cooperate and cost consciousness.	5 points
Approach to Scope of Work The proposer outlines their proposed approach to designing/developing and deploying new Web-based applications within an existing technical environment. The proposer describes a valid process for finalizing necessary application requirements with the client.	25 points
Value and Cost of Services The proposer lists the current hourly rates of the team members who will participate in the fulfillment of this contract. The cost of services appears reasonable compared to general market conditions.	20 points
Overall Proposal The proposer follows the instructions in this RFP, and provides a proposal that is concise, clearly written and thorough.	10 points
SEDB Participation (see PART 3 below)	10 points
Maximum Written Proposal Score:	110 points

b. Oral Interviews Criteria:

Approach to Scope of Work The proposer will be rated on the clarity of communication, the approach to the tasks, and the appropriateness of the approach to the work.	15 points
General presentation The project team will be rated on their ability to respond to questions, the level of knowledge about the topic and appropriateness of response.	15 points
Total Points Available for Oral Interview	30 points
TOTAL POINTS AVAILABLE	140 points

3. Selection Schedule (some dates tentative):

- | | |
|---------------------------------------|----------------------|
| a. Advertise and Issue RFP | January 26, 2006 |
| b. Pre-Proposal Meeting, 10 a.m. | February 8, 2006 |
| c. Written Questions due | February 8, 2006 |
| d. Addendum Issued if Needed | February 10, 2006 |
| e. Proposals Due | February 16, 2006 |
| f. Select and Notify Short List | February 23, 2006 |
| g. Interviews (if necessary) | February 27-28, 2006 |
| h. Final Selection | March 1, 2006 |
| i. Contract Negotiated | March 17, 2006 |
| j. Final Contract Signed | March 21, 2006 |

PART 2 - Contract Terms for Pricing and Rates

A. General

1. The Profit rate for Solid Waste Division RES contracts shall not exceed 10%. The same profit rate applies to the Consultant and each Sub-consultant.
2. Labor rate adjustments are limited to once a year. Labor rates for the following year (should a contract be extended) will usually be negotiated in November-December.
3. Labor rate adjustments for the following calendar year or made during the course of the following year, are limited to the percentage difference in the Consumer Price Index (CPI) for the local Seattle-Bremerton-Tacoma area, based on All Urban Consumers for the first six months of the current year versus the first six months of the previous year, plus no more than 2%. Exceptions may be granted in rare instances.
4. Promotions are limited to once a year subject to approval by the solid Waste Division, but shall neither increase contract costs nor decrease the scope of work to be performed by the Consultant. Promotions shall take place at the same time each year, generally at the time of the annual labor rate adjustments.
5. All consultants and sub-consultants have the option of using the direct salary and overhead pricing (Section B below) versus labor category (Section C). Small firms (usually fewer than 15 employees) have the additional option of using individual billing rate pricing, as described in Section D.

B. Direct Salary and Overhead Pricing

1. Allowable overhead shall be established at the beginning of the contract. The overhead rate shall not change for the duration of the contract and any extensions thereto. Overhead rates are subject to negotiation and audit.
2. Individual salary information shall be provided at the beginning of the contract, or whenever a new employee is added to the contract. Salary data are subject to audit and review throughout the contract period.
3. Consultant and Sub-consultant shall invoice labor based on individual salaries plus overhead (cost) plus profit (percent of cost) method.

C. Labor Category Pricing

1. Categories shall be developed based on minimum qualifications and responsibilities for each category level. Category rates used in the contract shall approximate the average salaries of individuals within each classification, plus overhead and profit.
2. Overhead shall be negotiated at the beginning of the contract, unless the Consultant or Sub-consultant has an established overhead rate under an existing Solid Waste Division contract. In such cases, the established overhead rate shall apply and shall be subject to review and re-negotiation every three years. Overhead rates are subject to audit.
3. Salary information for each person who may work on the contract, along with the overhead rate and profit, may be requested to initially establish category rates, whenever a new employee is added to the contract, and to audit established category rates. Salary data are subject to audit and review throughout the contract duration.
4. The same labor category rates shall apply to all Solid Waste Division contracts held by the firm.
5. Employees may be granted a raise to a higher category once per year and subject to prior approval by King County. Consultant staff moved between categories must be assigned work appropriate to that category.

D. Individual Billing Rates

1. The Individual Billing Rates method is appropriate for small firms with no accounting system in place that identifies direct and indirect costs separately. A firm's approved billing rates for the year will be used for that year for all new contracts and all amendments, whether the firm is prime or sub-consultant.
2. Individual Billing Rates are negotiated based on market analysis. The firm shall provide information as requested on the qualifications, experience, and salary of the firm's employees to assist in conducting a market analysis of proposed billing rates.

E. Markup

King County Solid Waste Division policy prohibits Consultant markup on Sub-consultant costs and on Other Direct Costs (ODCs).

PART 3 – King County Contracting Opportunities Program

The purpose of the King County Contracting Opportunities Program is to maximize the participation of Small Economically Disadvantaged Businesses (SEDB) through the use of rating points in the award of King County competitively bid contracts for the acquisition of technical services. The program is open to all firms that are certified as an SEDB by King County's Business Development and Contract Compliance Office.

A "Small Economically Disadvantaged Business" (SEDB) means that a business and the person or persons who own and control it are in a financial condition, which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Program is set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS), and an Owners' Personal Net Worth less than \$750K dollars.

A "Certified Firm" means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SEDB by the King County Business Development and Contract Compliance (BDCC) office. Information about becoming a Certified Firm, as well as a list of Certified Firms, may be obtained by visiting the King County's Contracting Opportunities Program Website address: <http://www.metrokc.gov/exec/bred/bdcc/prog/kccontractopp.htm> or contacting the BDCC office at (206) 205-0711.

In the evaluation of proposals, ten points will be allotted for SEDB participation. King County will count only the participation of SEDBs that are certified by King County at the date and time of proposal submittal. After tabulation of the selection criteria points of all prime submitters, ten (10) points shall be added to the score of all proposals that meet at least one of the two following sub-criterion:

1. If the Prime submitter is a SEDB firm that anticipates performing work for the entire contract unassisted and includes the SEDB certification number on page one of this submittal.
2. If the Prime submitter is not an SEDB but will use SEDBs for at least 5% of the total contract labor hours in the work to be performed in the Contract, and who complete the following table and include it in their proposal submission:

SEDB Certification Number	Sub-Consultant Name	Contact Name / Phone	Work to be performed	Percentage of Total Hours

SEDB participation shall be counted only for SEDBs performing a commercially useful function according to custom and practice in the industry. A commercially useful function is defined as a specific scope of work for which the SEDB has the management and technical expertise to perform using its own workforce and resources.

SECTION III – STANDARD TERMS AND CONDITIONS

NOTE: Sections III through VIII contain standard King County solicitation and/or contract boilerplate. It is included in this RFP as a reference for submitting Consultants. The final contract shall include only the specific language required of the final scope of work to be performed.

PART 1 - Administration

The final Contract negotiated shall be between the County and the Consultant who shall be responsible for providing the Work described therein. The County shall not be party to defining the division of Work between the Consultant and its Sub-consultants, if any, and the Scope of Work has not been written with this intent.

The Consultant represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder. Such personnel shall not be current or former employees of the County without the written approval of the County. Any current or former County employee who is involved, or becomes involved, in the performance of the Contract shall be disclosed; and the County shall determine whether conflicts of interest or ethical violations exist under the circumstances.

The Consultant's performance under the final Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be provided by the Consultant shall be delivered to the Project Manager. Questions by the Consultant regarding interpretation of the terms, provisions and requirements of the Contract shall be addressed to the Buyer or Project Manager for a response.

PART 2 - Contract Changes

No oral order or conduct by the County shall constitute a change to the Contract – neither an Administrative Change nor a Contract Amendment. Both parties shall agree to Contract changes in writing.

If any Contract change causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under the final Contract, an equitable adjustment in the Contract price, the project schedule, or both shall be made and the Contract and all related purchase orders(s) modified and agreed to in writing by both parties. Every Contract change may require a Cost/Price Analysis to determine the reasonableness of the proposed adjustments to Contract price or schedule. Contract changes do not require notice to sureties by County.

Ref: King County CON 7-8-1 (AEP).

PART 3 - Cost or Price Analysis

The County may require Cost or Price Analysis for the evaluation of Contract changes, terminations and revisions to Contract requirements or other circumstances as determined by the County.

PART 4 - Termination for Convenience/Default/Non-Appropriation

A. Termination for Convenience

The County for its convenience may terminate the Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Consultant. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Consultant shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Consultant shall be paid its costs, including necessary and reasonable Contract closeout costs and profit on that portion of the Work satisfactorily performed up to the date of termination as specified in the notice. The Consultant shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Consultant has any property in its possession belonging to the County, the Consultant shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract, applicable laws and regulations.

B. Termination for Default

If the Consultant does not deliver Work in accordance with the Contract, or the Consultant fails to perform in the manner called for in the Contract, or if the Consultant fails to comply with any material provisions of the Contract, the County may terminate the Contract, in whole or in part, for default as follows:

1. A "Notice to Cure" shall be served on the Consultant by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Consultant shall have ten (10) Days to cure the default or provide the County with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Consultant has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Consultant setting forth the manner in which the Consultant is in default and the effective date of termination.
3. The Consultant shall only be paid for Work delivered and Accepted, or Work performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract, applicable laws and regulations.
4. The termination of the Contract shall in no way relieve the Consultant from any of its obligations under the Contract nor limit the rights and remedies of the County hereunder in any manner.
5. King County may immediately terminate the Contract by written notice to the Consultant and may regard the Consultant as in default of the Contract if the Consultant becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise. In the event that any of the above events occurs, the Consultant shall immediately notify the County of its occurrence.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in the Contract or in any amendment hereto, the County may, upon written notice to the Consultant, terminate the Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The County shall be liable only for payment in accordance with the terms of the Contract for Services rendered prior to the effective date of termination; and,
2. The Consultant shall be released from any obligation under the Contract or a related Purchase Order to Provide further Work pursuant to the Contract as are affected by the termination.

Funding under the Contract beyond the current appropriation year will be conditional upon the appropriation by the County Council of sufficient funds to support the activities described in the Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

PART 5 - Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of the Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such party's control, to perform or comply with any obligation or condition of the Contract, upon giving notice and reasonably full particulars to the

other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Consultant ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in the Contract, including Termination for Default. Whenever a force majeure event causes the Consultant to allocate limited resources between or among the Consultant's customers, the County shall receive no less priority in respect to such allocation than any of the Consultant's other customers.

PART 6 - Washington State Sales Tax

The County shall make payment directly to the State for all applicable State sales taxes in case the Consultant is not registered for payment of sales taxes in the State of Washington. If the Consultant is so registered, it shall add the sales tax to each invoice and upon receipt of payment from the County, promptly remit appropriate amounts to the State of Washington.

PART 7 - Taxes, Licenses, and Certificate Requirements

The final Contract and any of the work provided there under shall be contingent and expressly conditioned upon the ability of the Consultant to provide the specified goods or Services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Consultant's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time the Contract becomes effective, the Consultant shall notify the County immediately of such condition in writing.

The Consultant and Sub-consultant (s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under the Contract.

PART 8 - Assignment

Neither party shall assign any interest, obligation or benefit under or in the Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, the Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Consultant from pledging any proceeds from the Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee, and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

PART 9 - Indemnification and Hold Harmless

A. Patent and Copyright Indemnity

The Consultant shall protect, indemnify, defend and save harmless the County from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights. So long as the County gives Consultant prompt notice of any infringement claim brought against the County regarding the Software and the County gives Consultant information, reasonable assistance, and sole authority to defend or settle any infringement claim, then, in the defense or settlement of an infringement claim, Consultant shall, in its reasonable judgment and at its option and expense: (i) obtain for the County the right to continue using the Software; (ii) replace or modify the Software so that it becomes non-infringing while giving equivalent performance; or (iii) if Consultant cannot obtain the remedies in (i) or (ii), the parties may proceed to a court of competent jurisdiction to determine the amount of fees that shall be returned to the County. Consultant shall have no liability to indemnify or defend the County to the extent the alleged infringement is based on: (i) a modification of the Software the County or others authorized by the County but not by the Consultant; or (ii) use of the Software other than in accordance with the Documentation. If the County is required to defend itself or enter into a settlement agreement due to Consultant's failure to defend, Consultant shall indemnify the County for its costs and expenses as well as any judgment entered against the County.

B. Indemnification For All Other Actions

Consultant shall protect, defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages for injuries to Persons and/or damage to tangible property, arising out of or in any way resulting from the acts or omissions of the Consultant its officers, employees and/or agents. Consultant's indemnification obligation shall include but is not limited to, all claims against the County by an employee or former employee of the Consultant or its Sub-consultant, and the Consultant expressly waives by mutual negotiation, with respect to the County only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event the County incurs any costs including attorneys' fees to enforce the provisions of this subsection, all such costs and fees shall be recoverable from the Indemnitor.

C. Limitation of Liability

Except for the County's intentional and willful violations of Consultant's intellectual or proprietary rights, which can be attributed to the County management, and injuries to persons by either party, neither party shall be liable for any indirect, incidental, special or consequential damages, including but not limited to lost data or profits, however arising, even if it has been advised of the possibility of such damages. Excluding damages incurred under the paragraphs A and B, either party's liability for damages to the other under the Contract shall be limited to 1 times the value of the contract or one million dollars whichever is greater. The parties agree to the allocation of liability of risk set forth in this subsection.

PART 10 - Applicable Law and Forum

Except as hereinafter specifically provided, the final Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning the Contract may only be filed in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

PART 11 - Conflicts of Interest and Non-Competitive Practices**A. Conflict of Interest**

By entering into the Contract to perform Work, the Consultant represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under the Contract. The Consultant shall not employ any Person or agent having any conflict of interest. In the event that the Consultant or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Consultant take immediate action to eliminate the conflict up to and including termination for default.

B. Contingent Fees and Gratuities

By entering into the Contract to perform Work, the Consultant shall represent that:

1. No Persons except as designated by Consultant shall be employed or retained to solicit or secure the Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Consultant or any of its agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of the Contract.

3. Any Person having an existing contract with the County or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current contracts with the County canceled and shall not be able to bid on any other County contracts for a period of two (2) years.

C. Disclosure of Current and Former County Employees

To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Consultant, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
2. Consultant shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this transaction may result in the County's denying or terminating the Contract.
3. After Contract award, the Consultant is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

Ref: K.C.C. 3.04.015, 3.04.20, 3.04.30, 3.04.035, 3.04.060.

PART 12 - Disputes, Claims and Appeals

The Consultant shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date in which the Consultant knows or should know of the question or claim. No claim by the Consultant shall be allowed if asserted after final payment under the Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Consultant gives written notice, as required in this section. The Buyer and Project Manager shall ordinarily respond to the Consultant in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Consultant disagrees with the determination of the Buyer and Project Manager, the Consultant shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Consultant shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the County.

PART 13 - Mediation and Arbitration

Nothing in this subsection precludes any party from seeking relief at any time from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle. If a dispute arises out of or relates to the Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to the Contract, or breach thereof, may be resolved by arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

PART 14 - Retention of Records, Audit Access and Proof of Compliance with Contract**A. Retention of Records**

The Consultant and its Sub-consultants shall maintain books, records and documents of its performance under the Contract in accordance with generally accepted accounting principles. The Consultant shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access

1. Federal, state or County auditors shall have access to Consultant's and its Sub-consultants' records for the purpose of inspection, Cost or Price Analysis, audit or other reasonable purposes related to the Contract. Federal, state or County auditors shall have access to records and be able to copy such records during the Consultant's normal business hours. The Consultant shall Provide proper facilities for such access, inspection and copying.
2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Consultant and for any other reason deemed appropriate and necessary by the County. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state or County audit procedures, laws or regulations. The Consultant shall fully cooperate with the auditor(s).
3. If an audit is commenced more than sixty (60) Days after the date of final payment for Contract Work, the County shall give reasonable notice to the Consultant of the date on which the audit shall begin.

C. Proof of Compliance with Contract

The Consultant shall, upon request, provide the County with satisfactory documentation of the Consultant's compliance with the Contract.

In addition, the Consultant shall permit the County, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

Ref: KCC 2.20.035, 2.20.040, 2.20.050, RCW 43.09.050, 43.88, 42.40.020, 42.40.040, 42.160.

PART 15 - Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by the Contract. The County does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

PART 16 - Recycled Products Policy

The County promotes the purchase and utilization of recycled material and products where available. Recycled material means material and byproducts, which have been recovered or diverted from solid waste disposal for the purpose of recycling. It does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the event of similar pricing, availability and other factors affecting the solicitation, preference may be given to products containing recycled material.

Ref: KCC 10.14 and CON 7-1-2 (AEP).

PART 17 - Nondiscrimination and Equal Employment Opportunity**A. Nondiscrimination in Employment and Provision of Services**

During the performance of the Contract, neither the Consultant nor any party subcontracting under the authority of the Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of

services or any other benefits under the Contract. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to the Contract.

B. Nondiscrimination in Subcontracting Practices

During the solicitation, award and term of the Contract, the Consultant shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with Sub-consultants and suppliers, the Consultant shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

Ref: KCC 12.16.020.

C. Compliance with Laws and Regulations

The Consultant shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination.

Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to the Contract.

D. Record-keeping Requirements and Site Visits

The County may, at any time, visit the project site, Consultant's and Sub-consultants' offices to review records related to the solicitation, utilization, and payment to Sub-consultants and suppliers in compliance with Executive Order 11246 as amended by Executive Order 11375. This provision includes compliance with any other requirements of this section. The Consultant shall provide all reasonable assistance requested by King County during such visits. The Consultant shall maintain, for six (6) years after completion of all work under the Contract, the following:

1. Records, including written quotes, bids, estimates or proposals submitted to the Consultant by all businesses seeking to participate on the Contract, and any other information necessary to document the actual use of and payment to Sub-consultant and suppliers in the Contract.
2. The Consultant shall make the foregoing records available to the County for inspection and copying upon request. Any violation of the mandatory requirements of the provisions of this subsection shall be a material breach of contract, which may result in termination of the Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment.

E. Discrimination In Contracting

King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to the Contract. During the performance of the Contract, neither Consultant nor any party subcontracting under the authority of the Contract shall discriminate or engage in unfair contracting practices prohibited by KCC 12.17.

F. Compliance with Section 504 of the Rehabilitation Act of 1973

For all contracts providing consulting, maintenance, training or other services, the Consultant shall complete a Disability Self-Evaluation Questionnaire, Attachment N. The 504/ADA Disability Assurance of Compliance will cover all programs and services offered (including any services not subject to the Contract) for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 ("ADA"). The Consultant shall complete a 504/ADA Disability Assurance of Compliance within ten (10) Days after receiving written notice of selection. The Consultant shall retain a copy of the completed 504/ADA and submit to the Buyer the original final two (2) signed pages titled "504/ADA Disability Assurance of Compliance", which will be attached to the Contract.

Ref: KCC 12.16.060 D.

PART 18 - Disadvantaged Business Enterprise (DBE) Participation

- A. Nondiscrimination 49 CFR part 26. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. The Consultant shall carry out applicable requirements of 49 CFR, part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy, as the County deems appropriate.
- B. DBE Program. The County has determined that no DBE goal shall be established for the Contract. However, the County requires that the Consultant report any actual DBE participation on the Contract to enable the County to accurately monitor DBE program compliance.

Ref: KCC 28.20.

- C. Efforts to Increase DBE Participation. Even though the Contract has no DBE goal, the County still encourages Consultants to pursue opportunities for DBE participation. To that end, Consultants are encouraged to:
1. Advertise opportunities for Sub-consultants and suppliers in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting proposals directly from DBEs.
 2. Utilize the services of available minority community organizations, minority consultant groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses.
 3. Establish delivery schedules, where requirements of the contract allow and encourage participation by DBEs and other small businesses.
 4. Achieve DBE attainment through joint ventures.
- D. DBE Listing. A current list of DBE firms accepted as certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available from that office at (360) 753-9693 or at www.omwbe.wa.gov. For purposes of the Contract, a DBE firm shall be certified by OMWBE as of the date and time of bid submittal.
- E. Procedure Applicable when DBEs Are Utilized. Concurrent with the use of any DBE Sub-consultants or supplier the Consultant shall provide notice of such use in writing to the King County Business Development and Contract Compliance Section (BDCC). Upon receipt of said notice, BDCC shall provide the Consultant with the applicable procedures for counting DBE participation. Assistance with this section is available from BDCC at (206) 205-0700. Notice referenced herein should be delivered to the following address:

King County
Office of Business Relations and Economic Development
M.S. KCC-EX-0402
516 3rd Avenue, Room 550
Seattle, WA 98104-3271
Phone: 206-205-0700
Fax: 206-296-0194

PART 19 - Severability

Whenever possible, each provision of the Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

PART 20 - Nonwaiver of Breach

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

PART 21 - Non-Discrimination in Benefits to employees with Domestic Partners

King County's Equal Benefits (EB) Ordinance 14823 states that to be eligible for award of contracts at a cost of \$25,000.00 or more, firms must not discriminate in the provisions of employee benefits between employees with spouses, and employees with domestic partners (<http://www.metrokc.gov/procurement/services/eb.aspx>). The Consultant shall be required to complete a Worksheet and Declaration form. Compliance with Ordinance 14823 is a mandatory condition for execution of a contract. The EB Compliance forms are available online at: http://www.metrokc.gov/procurement/resources/forms_eb.aspx

SECTION IV – SPECIFIC CONTRACTUAL TERMS AND CONDITIONS

PART 1 - Execution of the Contract

The documents constituting the final Contract between the County and the Consultant will be intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract documents, they shall take precedence as listed in the final Contract. The date the Contract is countersigned by the County is the Contract effective date. No other act of the County shall constitute Contract award. After Contract award, the County may issue individual Purchase Orders detailing the Work to be performed.

The Contract may be executed in counterparts, any of which shall be deemed an original and which shall together constitute one Contract.

PART 2 - Contract Term

The term of the final Contract shall be, at a maximum, five (5) years, extended annually in one (1) year increments at the County's option, commencing on the effective date of the Contract and subject to the termination provisions of this solicitation. The Warranty Period begins at Final Acceptance for a period of twelve (12) months. Upon the completion of the Warranty Period, the Maintenance Agreement runs from year to year unless terminated as described in the final Contract.

PART 3 - Notices

All notices or Documentation required or provided pursuant to the final Contract shall be in writing and shall be deemed duly given when delivered to the addresses first set forth below.

For Project Management related notices or Documentation:

KING COUNTY	CONSULTANT
Project Manager -	
Seattle, WA	
206-	
xxxxxx@metrokc.gov	

For Contract related notices or Documentation contact:

King County Procurement and Contract Services Section	
M.S. EXC-FI-0871	
Exchange Building, 8 th Floor	
821 Second Ave.	
Seattle, WA 98104-1598	
Buyer -	
(206) 684-	
xxxxxx@metrokc.gov	

PART 4 - Payment Procedures

A. Invoices

The Consultant for Work Accepted by the County shall furnish invoices to:

King County Accounts Payable
M/S EXC-ES-0875
Exchange Building, 8th floor
821 Second Avenue
Seattle, WA 98104-1598

Important – When a purchase order is issued against the final Contract that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery accepted by the County. All invoices shall include the following information: purchase order number, requester's name and phone number, date of invoice, invoice number and invoice total. For each item in the Contract, provide: item number, quantity, description, contract price and when applicable provide the manufacture, list price and discounts. For Services, invoices need to identify either milestones accepted, hours worked and Contract hourly rates, or authorized fees.

The County will not be bound by prices contained in an invoice that are higher than those in the currently approved price list or the Contract. If prior acceptance of the higher price has not been done by the County, the invoice may be rejected and returned to the Consultant for a correct invoice.

FAILURE TO COMPLY WITH THESE REQUIREMENTS OR TO PROVIDE AN INVOICE IN CONFORMANCE WITH THE CONTRACT MAY DELAY PAYMENT.

B. Payments

Within thirty (30) Days after receipt of an invoice, the County shall pay the Consultant for Accepted Work, upon acceptance of payment Consultant waives any claims for the Work covered by the Invoice.

If the Consultant is registered with the State of Washington it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the County will make payment directly to the State.

C. Sub-consultant Prompt Payment

The Consultant shall agree to pay each Sub-consultant under the Contract for satisfactory performance of its sub-contract no later than ten (10) Days from the receipt of each payment the Consultant receives from the County.

PART 5 - Advance Payment Prohibited

No advance payment shall be made for the Work furnished by Consultant pursuant to the Contract.

Ref: Article VIII, § 7 of the Washington State Constitution.

PART 6 - Purchase Orders

Purchase orders shall be issued referencing the final Contract number. Purchase order(s) shall define and authorize the Work by the Consultant based on the prices contained in the final Contract. The purchase orders issued by the County may reflect agreed to modification(s) of Contract terms, funding or other matters subject to any agreed upon to contract changes.

PART 7 - Pricing

Prices shall remain firm for the duration of the first Contract period. Price changes based on market conditions and price/cost analysis may be made after the first Contract period. The Consultant shall supply documentation satisfactory to County such as documented changes to the Producers Price Index (PPI), the Consumer Price Index (CPI) or a manufacturer's published notification of price change(s). Requests for any price change are to be made in writing to the Buyer in the Procurement Services Division office. Any price change shall be mutually agreed upon and shall take effect at the time of the Contract extension and remain throughout the extension period. The parties shall recognize that such changes could be increases or decreases in the prices; both parties are entitled to benefit from such price changes.

PART 8 - Shipping Charges

All prices shall include freight FOB to the designated delivery point. The County shall reject requests for additional compensation for freight charges.

PART 9 - Cost Mark-Up on Changed Work

Consultants shall not mark up Sub-consultants costs and other direct costs. The cost for Sub-consultants management shall be segregated into a single cost item and included as a separate task in the final Contract.

Ref: KC CON 7-7-1 6.2.1.g.

PART 10 - Direct Costs Related to Changed Work

Direct costs for additional Work shall be billed at cost without markup.

Reimbursement of Consultant travel, lodging and meal expenses are limited to the eligible costs based on the rates and criteria established in King County Code, chapter 3.24.

- A. The mileage rate allowed by King County shall not exceed the current Internal Revenue Services (IRS) rates per mile as allowed for business related travel. The IRS mileage rate shall be paid for the operation, maintenance and depreciation of individually owned vehicles for that time which the vehicle is used during Work hours. Parking shall be the actual cost. When rental vehicles are authorized, government rates shall be requested. If a Person does not request government rates, he/she maybe Personally responsible for the difference. Please reference the IRS web site for current rates. <http://www.irs.gov/>.
- B. Reimbursement for meals shall be limited to the per diem rates established by federal travel requisitions for the host city in the Code of Federal Regulations, 41 CFR § 301, App.A.
- C. Accommodation rates shall not exceed the federal lodging limit plus host city taxes. The Consultant shall always request government rates.
- D. The direct costs contained in A, B and C above shall only be authorized by the County Project Manager for Consultant staff living beyond commuting distance, normally considered to be for the travel beyond 100 miles of 821 Second Avenue, Seattle, WA.

- E. Air travel shall be by coach class at the lowest price available at the time the County Project Manager requests a particular trip. In general, a trip is associated with a particular Work activity of limited duration and only one round-trip ticket, per person, shall be billed per trip.
- F. Cost for equipment, materials and supplies, such as approved equipment rental; telephone, telegraph and cable expenses; reproduction costs including blueprinting, photographing, telecopying, mimeographing, photocopying and printing; express charges; commercial printing, binding, art Work and models; and, computer programming and data entry costs shall be billed without markup.
- G. Authorized sub-contract Services; provided that the limitations set forth in the above paragraphs shall be applicable to such subcontract Services.
- H. Other direct costs, not listed above, may be billed if the County has given prior approval.
- I. Receipts required for purchases \$10 and over, not including meals.

PART 11 - Acceptance Process

The County may give iterative acceptances as the Work is accomplished either by phase or milestone. The Consultant shall give the County "notice of completion" of Work related to a specific milestone following the Consultant's completion of all such Work in accordance with the payment schedule and delivery requirements in the Contract.

- A. Acceptance Process. Upon completion of the milestone deliverables, the Consultant shall notify the County and the Acceptance process will commence. Acceptance shall be based on conformance with the milestone guidelines. After notice by Consultant of completion of the milestone, County will issue a written notice of milestone Acceptance or provide Consultant with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining items not in compliance with the deliverable guidelines.
- B. Correction of Deficiencies Process. If a deliverable is rejected, Consultant will have a commercially practicable time to correct items documented in the County's notification of rejection. Following the delivery of Consultants' notice that the Work has been corrected, the County will issue a written notice of Acceptance or provide Consultant with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining Work not in compliance with the milestone. The project schedule will be adjusted accordingly in the event that a dispute regarding the method or accuracy of the correction causes a delay. If the deliverable(s) fails to comply with the milestone after Consultant's second attempt to correct the Work and no clear plan can be agreed upon between the County Project Manager and the Consultant's Project Manager, the County will determine the appropriate corrective actions.

PART 12 - Final Acceptance Process

The County shall begin the Final Acceptance process in accordance with the final Contract as follows:

- A. The parties shall agree on the start date for the Acceptance test.
- B. The Acceptance Test shall include thirty (30) Days of continuous operation of the Work without material defect in accordance with the Contract in the County's fully implemented production environment.
- C. If the County Accepts the Work, the County will send a notice of Final Acceptance to the Consultant.
- D. If County determines that the Work is not acceptable, the County shall notify the Consultant in writing, describing the deficiencies.
- E. The Consultant shall either provide a detailed, written plan to achieve Final Acceptance or to make corrections or replacements within a mutually agreed upon time period with no charge to the County. The parties shall mutually agree on a start date for beginning another Acceptance test.

- F. Another thirty (30) Day successful operation period shall follow any corrections or replacements to the Work. Two (2) or more thirty (30) Day operation Acceptance test periods can occur if mutually agreed to by the parties.
- G. If the County Accepts the Work following a second or subsequent acceptance test the County will send a notice of Final Acceptance to the Consultant.
- H. If the Consultant does not correct or replace the unacceptable Work the County may declare a breach of contract.

PART 13 - Warranty Provisions

- A. No Waiver of Warranties and Contract Rights. Conducting of tests and inspections, review of Scope of Work or plans, payment for a Work, or Acceptance or Final Acceptance of the Work by the County shall not constitute a waiver of any rights under the final Contract or in law. The termination of the Contract shall in no way relieve the Consultant from its warranty/guarantee responsibility.
- B. Warranty Term. The Consultant warrants that the Work performed under the final Contract shall be free from defects in material and workmanship, and shall conform all requirements of the Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the County. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.
- C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Sub-consultants. The Consultant shall ensure that the warranty requirements of the final Contract are enforceable through and against the Consultant's suppliers, vendors, distributors and Sub-consultants. The Consultant is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Consultant and those extended to the Consultant by its suppliers, vendors, distributors and Sub-consultants. Such inconsistency or difference shall not excuse the Consultant's full compliance with its obligations under the Contract. The Consultant shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Sub-consultants.

PART 14 - Express Warranties for Services

- A. Consultant warrants that the Services shall in all material respects conform to the requirements of the final Contract.
- B. Consultant warrants that qualified professional personnel with in-depth knowledge shall perform the Services in a timely and professional manner; and that the Services shall conform to the standards generally observed in the industry for similar Services.
- C. Consultant warrants that the Services shall be in compliance with all applicable laws, rules and regulations.
- D. Consultant warrants that the performance of the Services and any Software provided is free from intentional viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as "backdoor shutdown mechanisms", "time bombs", "automatic unauthorized connection to outside systems", programming that responds to or Provides information to outside systems' "pinging", and features that can "retire", "shut down", "cripple" or "stop" the Software. Consultant further warrants that neither the Software alone or through contact with the Consultant is capable of electronic self-help that may deprive the County of the use of the licensed Software.

THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

PART 15 - Express Warranties for Software

- A. Consultant shall warrant that on the date of Final Acceptance, the Software (if any) provided in the final Contract shall be free from significant programming errors and when used in accordance with user

manuals shall operate and conform to the Scope of Work, performance capabilities, functions and other descriptions and standards as identified in the final Contract and all supplemental information provided by Consultant.

- B. Consultant shall warrant that it has full power and authority to license or sublicense the Software to the County without the consent of any other Person.
- C. Consultant shall warrant that the performance of the Services related to the Software and the licensed use of the Software by County as permitted by the final Contract, including copying, shall not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure or other right of any third party.
- D. Consultant shall warrant that the Software, the License to the County to use the Software, instructions for use of the Software and the performance by Consultant of the Services, shall be in compliance with all applicable laws, rules and regulations.
- E. Consultant shall warrant any tapes, CD's, DVD's or other media delivered to the County to be free of defects in materials and workmanship under normal use for sixty (60) Days from the date of receipt by the County.
- F. Consultant shall warrant that the Software provided is free from intentional viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as "backdoor shutdown mechanisms", "time bombs", "automatic unauthorized connection to outside systems", programming that responds to or provides information to outside systems' "pinging", and features that can "retire", "shut down", "cripple" or "stop" the Software. Consultant shall further warrant that neither the Software alone or through Contract with the Consultant is capable of electronic self-help that may deprive the County of the use of the licensed Software.
- G. Consultant shall warrant that future maintenance or Software releases shall not degrade the Software, cause a breach of any other warranty or require the County to purchase new or additional hardware or Software for continued operation of the Software.
- H. The Consultant shall warrant functionality as described in the final Scope of Work and represents that the configuration identified in the final Contract will be specifically selected and designed for the County as being an operationally efficient integration of hardware, Software and Services.
- I. Consultant shall be responsible for providing and implementing a Software system that is successfully integrated into the existing system environment of the County and meets the functional requirements as specified in the final Contract.

THE EXPRESS WARRANTIES SET FORTH IN THIS SOLICITATION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

PART 16 - Warranty Remedies

- A. If at any time during the twelve (12) month period immediately following Final Acceptance of any Work covered by the final Contract, Consultant or the County discovers one or more material defects or Errors in the Work or any other aspect in which the Work materially fails to meet the provisions of the warranty requirements herein Consultant shall, at its own expense and within thirty (30) Days of notification of the defect by the County, correct the defect, Error or nonconformity by, among other things, making additions, modifications or adjustments to the Software as may be necessary to keep the Software in operating order in conformity with the warranties herein. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.
- B. During the sixty (60) Day media warranty period, the County may return defective media to Consultant and it shall be replaced without charge to the County.

- C. In order to qualify for remedial action under these warranties, the County shall report a warranty failure to the Consultant in writing within thirteen (13) months from the date of Final Acceptance. The Consultant shall not be responsible for remedial action under this warranty to the extent the failure to meet the warranty is caused by modification to the product(s) by the County or anyone other than the Consultant or its Sub-consultant, unless under Consultant's or its Sub-consultant's direction.
- D. The County shall give written notice of any defect to the Consultant. If the Consultant has not corrected defect with thirty (30) Days after receiving the written notice, the County, in its sole discretion, may correct the defect itself. In the case of an emergency where the County believes delay could cause serious injury, loss or damage, the County may waive the written notice and correct the defect. In either case, the County shall charge-back the cost for such warranty repair to the Consultant.
- E. The Consultant shall be responsible for all costs of repair or replacement in order to restore the Work to the applicable Contract requirements or Scope of Work, including shipping charges, for Work found defective within the warranty period, regardless of who actually corrects the defect.

PART 17 - Defective Work

Prior to Final Acceptance, when and as often as the County determines that the Work, furnished under the final Contract is not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to the Consultant. Within seven (7) Days of receiving such written notification, the Consultant shall supply the County with a detailed, written plan which indicates the time and methods needed to bring the Work in compliance with the Contract. The County may reject or accept this plan at its discretion. If the County rejects the plan the Consultant may be determined to be in material default of the Contract. This procedure to remedy defects is not intended to limit or preclude any other remedies available to the County by law, including those available under the Uniform Commercial Code, Title 62A RCW.

PART 18 - Equipment and Software Warranty Process

During the warranty period, equipment and Software support shall be as described in the final Contract's Maintenance Agreement.

PART 19 - Equipment and Software Maintenance

After the warranty period, equipment and Software Maintenance support shall be as described in the final Contract's Maintenance Agreement.

PART 20 - Ownership/Rights to Work Product

- A. All data and Work (collectively called "Work Product") produced pursuant to the final Contract shall be considered "work made for hire" under the U.S. Copyright Act, 17 U.S.C. §101 et seq, and shall be owned by King County. Consultant is hereby commissioned to create the Work Product. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- B. If for any reason the Work Product would not be considered a "work made for hire" under applicable law, Consultant shall assign and transfer to the County the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- C. Consultant shall execute all documents and perform such other proper acts, as the County may deem necessary to secure for the County the rights provided pursuant to this section.
- D. Consultant shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Consultant ownership in any Work Product, without the prior written permission of the County. Consultant shall take all reasonable steps necessary to ensure that its agents, employees, or Sub-consultants shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

- E. Work Product developed for the final Contract including preexisting material needed to operate the Work Product shall be transferred to the County with a non-exclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such preexisting material, and to authorize others to do so except that such license shall be limited to the extent to which Consultant has a right to grant such a license.

PART 21 - Independent Status of Consultant

In the performance of the final Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by the Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Consultant shall not make any claim of right, privilege or benefit, which would accrue, to an employee under chapter 41.06 RCW or Title 51 RCW.

PART 22 - Nondisclosure of Data

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Consultants and Sub-consultants shall not utilize nor distribute the County data in any form without the express written approval of the County.

PART 23 - Non-Disclosure Obligation

While performing the Work under the final Contract, the Consultant may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Consultant shall not disclose or publish the information and material received or used in performance of the Contract. This obligation is perpetual. The Contract will impose no obligation upon the Consultant with respect to confidential information which the Consultant can establish that:

- a) was in the possession of, or was rightfully known by the Consultant without an obligation to maintain its confidentiality prior to receipt from the County or a third party;
- b) is or becomes generally known to the public without violation of the Contract;
- c) is obtained by the Consultant in good faith from a third party having the right to disclose it without an obligation of confidentiality; or
- d) is independently developed by the Consultant without the participation of individuals who have had access to the County's or the third party's confidential information.

If the Consultant is required by law to disclose confidential information the Consultant shall notify the County of such requirement prior to disclosure.

PART 24 - Public Disclosure Requests

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, shall be available for inspection and copying by the public.

Ref: RCW 42.17.

If a Consultant considers any portion of the Work, including Software, data and related materials, delivered to the County to be protected under the law, the Consultant shall clearly identify such items with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such item, the County shall determine whether the material should be made available under the law. If the material or parts thereof are determined by the County to be exempt from public disclosure, the County shall not release the exempted documents. If the material is not exempt from public disclosure law, the County shall notify the Consultant of the request and allow the Consultant ten (10) Days to take whatever action it deems necessary to protect its interests. If the Consultant fails or neglects to take such action within said period, the County shall release the item deemed subject to disclosure. By signing the Contract, the Consultant assents to the procedure outlined in this subsection and shall have no claim against the County on account of actions taken under such procedure.

PART 25 - Board of Ethics Disclosure Requirement

Pursuant to King County Code 3.04.120, the consultant shall file a Consultant Disclosure Form with the Board of Ethics and the King County Executive.

PART 26 - Pricing of Spare Parts

The County shall have the right to conduct a Cost or Price Analysis on specific spare parts if pricing appears to be in excess of standard industry pricing for similar parts. Any differences shall be subject to negotiations to the satisfaction of the County. The County is not required to purchase spare parts under the Contract if it can purchase the same item(s) from another source under terms that are more advantageous to the County.

PART 27 - No Prototype Components

All hardware, Software and Work, shall be in production and be used by customers comparable to the County at the time of the final Contract's effective date. Test or prototype items shall be clearly identified as such. A sufficient inventory of the Work shall be available to meet delivery requirements.

PART 28 - Hazardous Chemical Communication (as applicable)

In order to comply with WAC 296-62-054 and WAC 296-839, Hazard Communication, the Consultant shall prepare, if necessary, a Material Safety Data Sheet (MSDS) for all products containing any toxic products that may be harmful to the end user. The MSDS Sheet is to accompany the toxic product(s) to the specified delivery sites.

The following information shall be included in the MSDS:

- A. Chemical Abstract Service (CAS) numbers for every chemical that is listed in the MSDS.
- B. If the product is actually used diluted, the dilution rate should be so stated in the MSDS and the hazards and corresponding Personal protection, etc. also be listed.
- C. SARA Title 3 chemicals shall be listed with the percentage by weight of the total product.
- D. A statement as to the intended use of the product.

PART 29 - Industrial and Hazardous Waste (as applicable)

The Consultant shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to a public sewer, private sewer, or side sewer tributary to the metropolitan sewerage system.

Consultant shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

PART 30 - Patents and Royalties

The Consultant shall be responsible for paying all license fees, royalties or the costs of defending claims for the infringement of any intellectual property that may be used in performing the Contract. Before final payment is made on the Contract, the Consultant shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims.

PART 31 - Changed Requirements

New federal, state and county laws, regulations, ordinances, policies and administrative practices may be established after the date the final Contract is established and may apply to the Contract. To achieve compliance with changing requirements, the Consultant agrees to accept all changed requirements that apply to the Contract and require Sub-consultants to comply with revised requirements as well. Changed requirements shall be implemented through accepted Contract Changes.

PART 32 - Patents, Copyrights and Rights in Data

Any patentable result or materials suitable for copyright arising out of the final Contract shall be owned and retained by the County. The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Consultant agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other Work submitted or which is specified to be delivered under the Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the County.

All such Subject Data furnished by the Consultant pursuant to the Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page, (or in such case of maps, in the name block), as may be requested by the County. The Consultant shall also place its endorsement on all Consultant-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.

The Consultant shall ensure that the substance of foregoing subsections is included in each sub-contract for the Work under the Contract.

PART 33 - Software License (as applicable)

Subject to the terms and conditions set forth in the final Contract and the Software License Agreement, including payment of the license fees by County to Consultant, Consultant shall grant to the County a perpetual, non-exclusive, non-transferable license to use the Software, including any Software and source code released pursuant to any executed Escrow Agreement, as well as any documentation and training materials.

PART 34 - Disaster Recovery

In the event a disaster is declared at any County site(s), Consultant will allow the County the right to use the Software in accordance with the Software License Agreement, at the recovery site identified by the County, at no additional cost to the County for the Services or maintenance thereof.

PART 35 - Authorized Users

Only employees, agents, and Consultants who need to use the Software in the performance of their duties for the County and who are authorized and enabled by the County may access and utilize the Software.

PART 36 - Bug Status Reports

The Consultant shall provide bug status reports specifying all known outstanding bugs in the current version of the Software. The initial bug status report shall accompany the Software when delivered. Subsequent reports shall be provided monthly or as agreed to by the County Project Manager.

PART 37 - Enhancements, Upgrades, Replacements and New Versions of Software

- A. The Consultant agrees to provide to the County, at no cost, prior to, and during installation and implementation of the system any Software/firmware Enhancements, Upgrades and replacements which the Consultant initiates or generates.
- B. As long as the County has a maintenance agreement for the Software, the Consultant shall notify the County of the availability of newer versions of the Software and within thirty (30) Days Provide the County with this new version. The Consultant shall provide free Updated Documentation in the form of new revision manuals or changed pages to current manuals consistent with the original Documentation supplied and reflecting the changes included in the new version of the Software. The Consultant shall Provide bug status reports specifying all known, outstanding bugs in the new Software versions. The information shall be updated periodically as new information and Work-around become known. The Consultant shall also Provide free installation instructions, procedures and any installation program required by the installation.

PART 38 - HIPAA – Protecting Patient Privacy

The work under the final Contract may require compliance with “The Health Insurance Portability and Accountability Act of 1996” (HIPAA). Information on this Act can be found at the Office of Civil Rights website: <http://www.hhs.gov/ocr/hipaa/>.

SECTION V – INSURANCE REQUIREMENTS

PART 1 - Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, the Consultant shall file with the County evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the County received notice at least forty-five (45) Days prior to the effective date of any cancellation, lapse or material change in the policy.
- B. The Consultant shall, upon demand of the County, deliver to the County all such policy of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.
- C. Failure to provide such insurance in a timeframe acceptable to the County shall enable the County to suspend or terminate the Consultant's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of the Contract shall not relieve the Consultant from its insurance obligations hereunder.

PART 2 - Insurance Requirements

- A. The Consultant shall obtain and maintain the minimum insurance set forth below.

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Consultant under the Contract. The Consultant shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with the Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability. Errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "Claims Made" basis, the Consultant warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of the Contract.

- B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1. General Liability

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering COMMERCIAL GENERAL LIABILITY.

- 2. Automobile Liability

Insurance Service form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8 and 9.

- 3. Professional Liability

Professional Liability, Errors and Omissions coverage.

In the event that Services pursuant to the Contract either directly or indirectly involve or require professional Services, Professional Liability, Errors and Omissions coverage shall be Provided.

4. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable federal or "Other States" State Law.

5. Employers Liability or "Stop Gap":

The protection Provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection Provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

The Consultant shall maintain limits no less than, for:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, Personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

Automobile Liability: Not Applicable

2. Professional Liability, Errors and Omissions: \$1,000,000 per Claim and in Aggregate.
3. Workers' Compensation: Statutory requirements of the state of residency.
4. Employers Liability Stop Gap: \$1,000,000.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions shall be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Consultant's liability to the County and shall be the sole responsibility of the Consultant.

E. Other Insurance Provisions

The insurance policies required in the final Contract are to contain, or be endorsed to contain the following provisions:

1. Liability Policies:

The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Consultant in connection with the Contract. Use the above exact language on the Endorsement Form.

To the extent of the Consultant's negligence, the Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Consultant in any way.

The Consultant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

F. Acceptability of Insurers

Unless otherwise approved by the County:

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the

Consultant shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

G. Sub-consultants

The Consultant shall include all Sub-consultants as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Sub-consultant. *Insurance coverages provided by Sub-consultants as evidence of compliance with the insurance requirements of the Contract shall be subject to all of the requirements stated herein.*

H. Work Site Safety

The Consultant shall have the “right to control” and bear the sole responsibility for the job site conditions, and job site safety. The Consultant shall comply with all applicable Federal, State and Local safety regulations governing the job site, employees and Sub-consultants. The Consultant shall be responsible for the Sub-consultant's compliance with these provisions.

I. Endorsements

Endorsement must be included with insurance form, i.e. standard industry forms: “2010 111” or “GC 76 80 10 00. **The County requires this Endorsement to complete the Contract.**

SECTION VI – CONSULTANT RESPONSIBILITIES

PART 1 - Implementation

System configuration and prototyping is the primary responsibility of the Consultant. The core Software system shall be configured, prototyped, refined, tested, updated and documented by the Consultant. The County shall accept the system for roll out only after a successful user Acceptance test is performed.

The Consultant shall not be relieved of its obligation to provide a completely integrated system if the County creates interface programs.

PART 2 - Consultant Responsibilities

The Consultant shall be responsible for performing the Work described in the Scope of Work. Each written deliverable shall require an acceptable preliminary draft to precede Acceptance of deliverable and work completion.

SECTION VII – WEB BASED REQUIREMENTS

PART 1 - TESTING AND ACCEPTANCE

All deliverables shall be thoroughly tested by the selected Consultant for Accessibility and for conformance with the Specifications. All necessary corrections as a result of such testing shall be made prior to delivery to County. Upon receipt of a deliverable and all related Documentation, County shall have a period of days as described in the Specifications and final contract within which to test the deliverable (the “Acceptance Period”) and to notify Consultant in writing of its Acceptance or rejection based on County’s test results with respect thereto.

PART 2 - WEBSITE WARRANTY

The selected Consultant represents that Web Site (1) shall be free of defects in material and workmanship in all material respects; and (2) will conform in all respects to the functional and other descriptions contained in the Scope of Services. For a period of one year after the date of the Acceptance of the Final Version by the County (“the Warranty Period”), Consultant agrees to replace or repair at its own expense any Errors or non-conformities with the Scope of Work.

PART 3 - WEBSITE SUPPORT

The selected Consultant agrees to provide County with the support services to maintain and update the Web Site on the World Wide Web during the one-year Warranty Period at no cost to County. Consultant shall

promptly remedy any Non-conformity in the Web Site. "Non-Conformity" means (i) any failure of the Web Site to meet Specifications; (ii) the inability of the Web Site to perform any intended features or function consistently and without interruption; and (iii) any other Error or defect that has an adverse impact upon the use or performance of the Web Site as reasonable determined by County.

PART 4 - MAINTENANCE PERIOD

After the expiration of the Warranty Period, Consultant shall agree to provide County with the services, at County's option for a specified number of years after the last day of the Warranty Period (the "Maintenance Period") for an annual fee of to be specified in the final contract. Such maintenance shall include correcting any Errors or failure of the Web Site to conform to the Specifications. Maintenance shall include the development of Enhancements at the time of the notice.

PART 5 - PROPRIETARY RIGHTS

- A. **County's Ownership Rights.** Consultant acknowledges and agrees that except as stated in the final contract, the Web Site Content and Documentation, including but not limited to images, graphic user interface, source and object code, and any other Documentation and notes associated with the Web Site are and shall be the property of the County. Title to all intellectual property rights, including but not limited to copyrights, trademarks, patents and trade secrets in the Web Site Content and Documentation is with, and shall remain with the County.
- B. **Assignment of Rights.** Except as provided in the final contract, the selected Consultant will irrevocably assign, convey and otherwise transfer to County, and its respective successors and assigns, all rights, title and interest worldwide in and to the Web Site Content and Documentation and all copyrights, trade secrets, patents, and trademarks and other intellectual property rights and all contract and licensing rights, and all claims and causes of action of any kind with respect to any of the foregoing, whether known or hereafter become known. In the event that Consultant has any rights in and to the Web Site Content and Documentation that cannot be assigned to County, Consultant will unconditionally and irrevocably waive the enforcement of all such rights, and all claims and causes of action of any kind with respect to any forgoing against the County. In the event that Consultant has any rights in and to the Web Site Content and Documentation that cannot be assigned to County and cannot be waived, Consultant shall grants to County a perpetual, exclusive, worldwide, royalty-free license to reproduce, distribute, modify, publicly perform and publicly display on the World Wide Web, Content and Documentation including, without limitation, the right to use in any way whatsoever the Web Site Content and Documentation. Consultant shall retain no rights to the use or ownership of the Web Site except as stated in the final contract, and agrees not to challenge the validity of the ownership by County in the World Wide Web Content and Documentation.
- C. **Ownership of Components.** With King County's agreement, the selected Consultant may request to retain copyright of the certain materials. However, Consultant grants to County a royalty-free, worldwide, perpetual, irrevocable, non-exclusive license to use, reproduce, distribute, modify, publicly perform, and publicly display the Retained Components on the Web Site or any other Web Site operated by or for the County.
- D. **Licenses to Consultant's Tools.** The selected Consultant shall be responsible for obtaining and paying for license fees for any Consultant Tools used in this project that are not owned by Consultant.
- E. **License to Web Site and County Content.** The County will grant to the selected Consultant a nonexclusive, worldwide license to reproduce and modify County Content and Web Site Content to develop and maintain the Web Site.
- F. **County's Domain Name.** County's domain name www.metrokc.gov, shall remain the sole property of County. The selected Consultant shall acknowledge that the Consultant has no right to use County's domain name other than in connection with the Web Site development and maintenance project to be covered in the final contract.

PART 6 - WARRANTIES AND COVENANTS

The selected Consultant shall represent, warrant and covenant to the County the following:

- A. Consultant has the full power to enter into an Agreement and perform the services provided for therein.
- B. The use, public display, public performance, reproduction, distribution, or modification of the Web Site Content and Documentation will not violate the rights of any third parties, including, but not limited to, copyright, trade secrets, trademarks, patents, privacy and publicity. The use of Consultant Tools in the Web Site Content and Documentation will not violate the rights of any third parties, including, but not limited to, copyright, trade secrets, trademarks, patents, privacy and publicity or any other intellectual property right.
- C. The Web Site Content and Documentation will be created solely by Consultant, Consultant's full-time employees, or independent consultant who shall assign all right, title and interest worldwide in their interest to Consultant.
- D. Consultant will be the owner of all right, title and interest in the tangible forms of the Web Site Content and Documentation and all intellectual property rights protecting them as free and clear of all encumbrances, including, without limitation, security interests, liens, licenses, charges or other restriction.

PART 7 - PATENT AND COPYRIGHT INDEMNITY.

The selected Consultant shall agree to defend, indemnify and hold harmless County from any infringement claim, so long as County gives Consultant prompt notice of any infringement claim brought against County regarding use Consultant's Documentation and Web Site Content and King County will give Consultant information, reasonable assistance, and sole authority to defend or settle any infringement claim, then, in the defense or settlement of an infringement claim, Consultant shall, in its reasonable judgment and at its option and expense: (i) obtain for King County the right to continue using the Web Site; (ii) replace or modify the Web Site so that it becomes non-infringing while giving equivalent performance; or (iii) if Consultant cannot obtain the remedies in (i) or (ii), the parties may proceed to a court of competent jurisdiction to determine the amount of fees that must be returned to County. Consultant shall have no liability to indemnify or defend King County to the extent the alleged infringement is based on: (i) County Content; or (ii) modification of the Source Materials the County or others authorized by the County. Notwithstanding this section, King County shall retain the right and ability to defend itself against any claims that the Web Site infringes any patent or copyright. If King County chooses to defend itself or enter into a settlement agreement without the selected Consultant's prior knowledge, consent, and specific agreement to pay costs, King County understands that Consultant will not indemnify King County for its costs and expenses.

PART 8 – SPECIFIC COMPLIANCE WITH WEB REQUIREMENTS OF SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED AND THE AMERICAN WITH DISABILITIES ACT OF 1990

- A. Accessibility.

The web sites of governmental entities are subject to the ADA and must be accessible to people with disabilities. Accordingly, Consultant shall ensure that the Web Site developed for County is Accessible, as set forth in King County Web Page Specifications.

SECTION VIII – REQUIRED FORMS

The following completed forms will be required from the selected Consultant, prior to contract award:

- A. King County Personnel Inventory Report
- B. Affidavit and Certificate of Compliance with King County Code 12.16
- C. Statement of Compliance - Union or Employee Referral Agency Statement (if applicable)
- D. King County Code 3.04.120 and Consultant Disclosure Form
- E. 504/ADA Disability Assurance of Compliance and Corrective Action Plan
- F. Equal Benefits Compliance Declaration Form

Copies of these forms are available by contacting the King County Procurement and Contract Services Division. They are available in paper form, or may be obtained via e-mail. Please contact Cathy Betts at 206-263-4267 or Roy L. Dodman at 206-263-4266, or by sending an e-mailed request to cathy.betts@metrokc.gov or roy.dodman@metrokc.gov.

SECTION IX –PROPOSAL CHECKLIST

- A. One (1) signed copy of entire RFP package.
- B. One (1) signed copy of any Addendum that was issued. (If it has signature box at bottom of first page, it must be returned.)
- C. One (1) unbound copy of proposal response marked “Original.”
- D. Four (4) copies of proposal response.
- E. Complete the Bid Identification Label below (or reasonable facsimile) and attach it to a prominent place on the exterior of the submission envelope, box, etc.


URGENT – SEALED BID ENCLOSED Do Not Delay – Deliver Immediately	
 King County	King County Procurement & Contract Services Section Exchange Building, 8 th Floor 821 2nd Ave, EXC-FI-0862 Seattle, WA 98104-1598
Bid No.	RFP 102-06RLD
Bid Title	Solid Waste Division Web Maintenance & Development
Due Date	
Vendor	

EXHIBIT A – DEFINITIONS

- A. **Acceptance** means formal action of the County in determining that the Consultant's work has been completed in accordance with the contract.
- B. **Accessible or Accessibility** means the web site as developed and/or maintained by the consultant is in accordance with King County Web Page Specifications for ensuring equal access to people with disabilities, attached hereto.
- C. **County Content** means the material provided by County to be incorporated into the Web Site.
- D. **Consultant Tools** means the software tools of general applications, whether owned or licensed to Consultant, which are used to develop the Web Site.
- E. **Documentation** means the documentation for the software developed by the Consultant specifically for the Web Site and other material implemented in the Web Site. Source Materials are part of the Documentation.
- F. **Enhancements** mean any improvements to the Web Site to implement new features or as new material. Enhancements shall include modifications to the Web Site Content to make the Web Site operate on the Server System with a new ISP.
- G. **Error** means any failure of the Web Site to (i) to meet the Specifications and/ or (ii) to operate with the Server System.
- H. **Final Version** means a non-copy protected and unencrypted disk master of the final version of the Web Site, recorded in executable form in the specified medium with any necessary supporting software and data, as to which all development work hereunder, and corrections to the beta version, have been completed and which meets the Specifications.
- I. **Specifications** for the World Wide Web shall be set forth in the final Contract.
- J. **Source Materials** means (i) all Documentation, notes, development aid, technical Documentation and other material produced or created by Consultant during the development of the Web Site, in which internally documented form is actually used by Consultant for the development and maintenance of the Web Site.
- K. **Server System** means the hardware and software system hosting the Web Site.
- L. **Web Site Content** shall mean (i) graphic user interface, text, images, music and other material of the Web Site developed by the Consultant under this agreement which is accessible on the Internet and/or intranet via web browsers or other such tools, and (ii) software (including CGI, Java, VB scripts)¹ developed by the Consultant under the Contract to implement the Web Site. Web Site Content shall not include Consultant Tools.
- M. **Web Site** means the site to be developed for the County on the graphic portion of the Internet known as the World Wide Web.

¹ Include other programming language that will be used in the creation of the Web Site.